### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

	)	
ELECTRONIC PRIVACY	)	
INFORMATION CENTER	)	
	)	
Plaintiff,	)	
V.	) Civil Action No. 12-CV-00667	7-CKK
FEDERAL BUREAU OF	)	
INVESTIGATION,	)	
	)	
Defendant.	)	
	)	

### Exhibit N

#### FEDERAL BUREAU OF INVESTIGATION FOI/PA DELETED PAGE INFORMATION SHEET FOI/PA# 1226796-0

1 OI/1 A# 1220/30-0	
Total Deleted Page(s) = 60	Bates Page
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(Propose	<u>a)</u>

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### Standard Operating Procedure (SOP) for Case Squads requesting Cell Phone Tracking assistance during "Exigent Circumstances"

Definition: Exigent Circumstances - An emergency exists that involves the immediate danger of death or serious physical injury to a person. Our threshold for utilizing the below procedure is that the situation demands immediate action to prevent death or serious bodily injury.

Step 1.

Step 2.

CELL/0TD 002617

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Step 3.			
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Step 4.			1
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CELL/010 002615

	b7E
	<b>b7E</b>
Step 5.	b6 b7С b7 <b>Е</b>
	D/E
Step 6.	
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CELL/010 002619	

Step 7.	]	b7E
Step 8.	b7E	
Step 9.		
Step 10.		
Step 11.	b7E	
*** Recommendations: Any case squad that foresees the use of Cell Tracking should:		
<ul> <li>a. Be familiar with the sample Pen Register/2703(d) Orders.</li> <li>b. Pro-actively meet with their perspective AUSA's and discuss the specifics of the Order.</li> </ul>		
c. Ensure squad members are familiar with the use of the Pen Registers.		b7E
CELL/070.002620		

GSM Cell Phone Tracking For Dummies  StingRay,  Revision: 10/26/2005  Revision: 10/26/2005	be b
Prior to tracking, answer the following questions:	
1. 2. 3. 4. 5.	b3 b7E
Prior to starting up the Stingray  STEP 1	b3 b7E
Turn StingRay system on.  STEP 3	b3 b7Е
CELL/OTD 002622	,

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CELL/OTD 002623

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STEP 8				
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STEP 9			_	
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	CELL/OTO CORREA			

portant Reminder	rs:		
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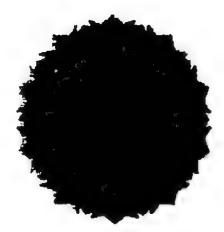
Revision: 10/26/2005		b6 b7C
CDMA Cell Phone Tracking For Dummies  StingRay,		b3 b7c
CDMA TECHNOLOGY IS RESPONSIBLE FOR APPROXIMATELY 50% OF THE CELL PHONE BUSINESS IN THIS COUNTRY. THIS APPLIES PRIMARILY TO SPRINT, VERIZON, VIRGIN (PREPAID PHONE) AND A FEW OF THE SMALLER CELL PHONE COMPANIES.	7	
Prior to tracking, answer the following questions:		
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6. 7. 8. 9.		
Prior to starting up the Stingray system		
STEP 1	ьз <b>ъ7</b> Е	1
STEP 2	•	
Turn StingRay system on		
CELL/010 002627	l	

STEP 3		b3 b7E
STEP 4		
STEP 5		b3 b7E
STEP 6		
		b3 b7E
STEP 7		b3 b7E
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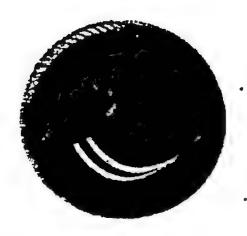
STEP 8	
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STEP 10	 •			ŀ
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STEP 11				
STEP 12			b3 b7E	
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STEP 13				
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portant Reminders		
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#### Overview

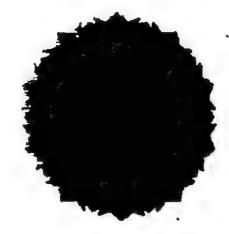


- DOJ's Policy on Cellsite Simulators: Pen Register Device (18 U.S.C. 3127(3))
  - BEST PRACTICES
- Emergency Pen Register Authority
  - Federal v. State Orders
  - Voluntary Disclosures
- Prospective Cell Site Location data
  - Distinguished from WITT
- GPS/Triangulation from provider
- Protecting Sensitive Techniques
  - Use as evidence
- Loan of ELSUR Policy
  - Using State Orders
  - Liability-scope of authority

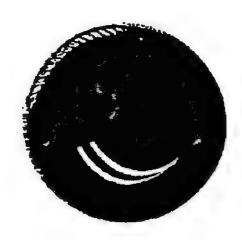
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### **DOJ Opinion:**

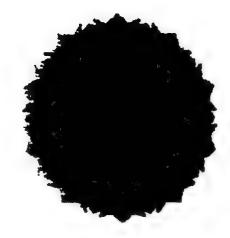


DOJ: Pen/Trap order	
---------------------	--

to use a Pen Register Device to obtain "signaling information" transmitted from a cellular telephone to:

- 1) Identify a target phone or
- 2) Locate a phone

FB!CELL-50



### WITT Pen Register— BEST PRACTICES



### BEST PRACTICES:

. authorize installation & use	$\bot$
. Advise of potential	T
•	
Will not retain records beyond use to locate target phone	



### Disruption of Service



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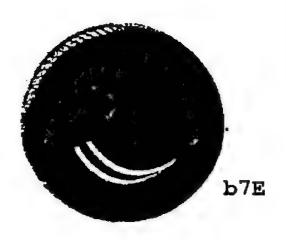
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47 <u>U.S.C</u>	§ 333 prohibits interf	erence with cellul	ar frequencies
-			
18 USC 3	124: requires that a pe	n register be imp	lemented with
	m of interference" to tl		
=			



### Purge

Data



	preserve 1st Amendme
rights & Minimize	data
	·



### **Data Retention**



- Maintaining/Purging "Pen" data?
  - -WITT policy EC 268-HQ-1068430:

1		
1		

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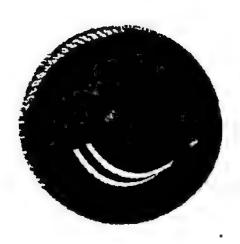
# Emergency Provision 3125(a)(1)



<ul> <li>DOJ command Center</li> </ul>	
OEO (business hours)	
Emergencies involving:	
<ul> <li>Immediate danger of death or serious injury or immediate</li> </ul>	e
threat to a national security interest	
- MIOG, Part 2, 10-10.7.1	,
	]



### Alternative authority

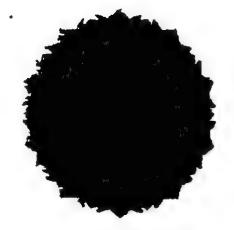


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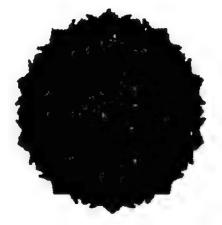
13

Consent (18 USC 3121(b)(3))	
	•
Voluntary Disclosure by Provider (18 USC 2702(c	)(4)) : if
provider "reasonably believes that an emergence	y
involving immediate danger of death or serious	physic
injury to any person justifies the disclosure of:	"a reco
or other information pertaining to a subscriber	<u>or</u>
customer of such service."	

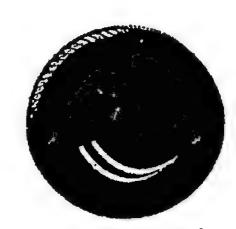




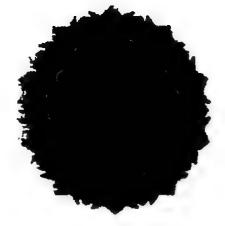
# WITT Function vs. Location (Tower/Sector) data from Provider



### WITT doesn't collect Cell site data



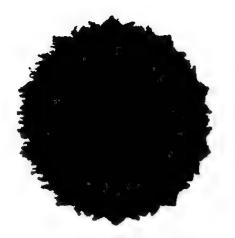
WITT equipment:	
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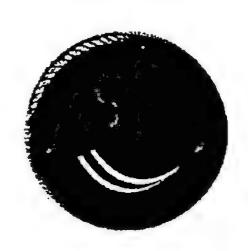
### Guidance



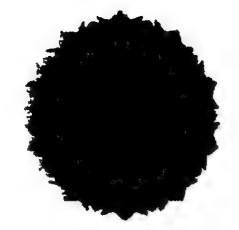
A	ND Use a PR/TT ord	ler for WITT gear			]
	<ul><li>2. Advise of</li><li>3. Not retain</li></ul>	records	•	•	]
			•		<u> </u>



### 4<sup>th</sup> Amendment Privacy Interest



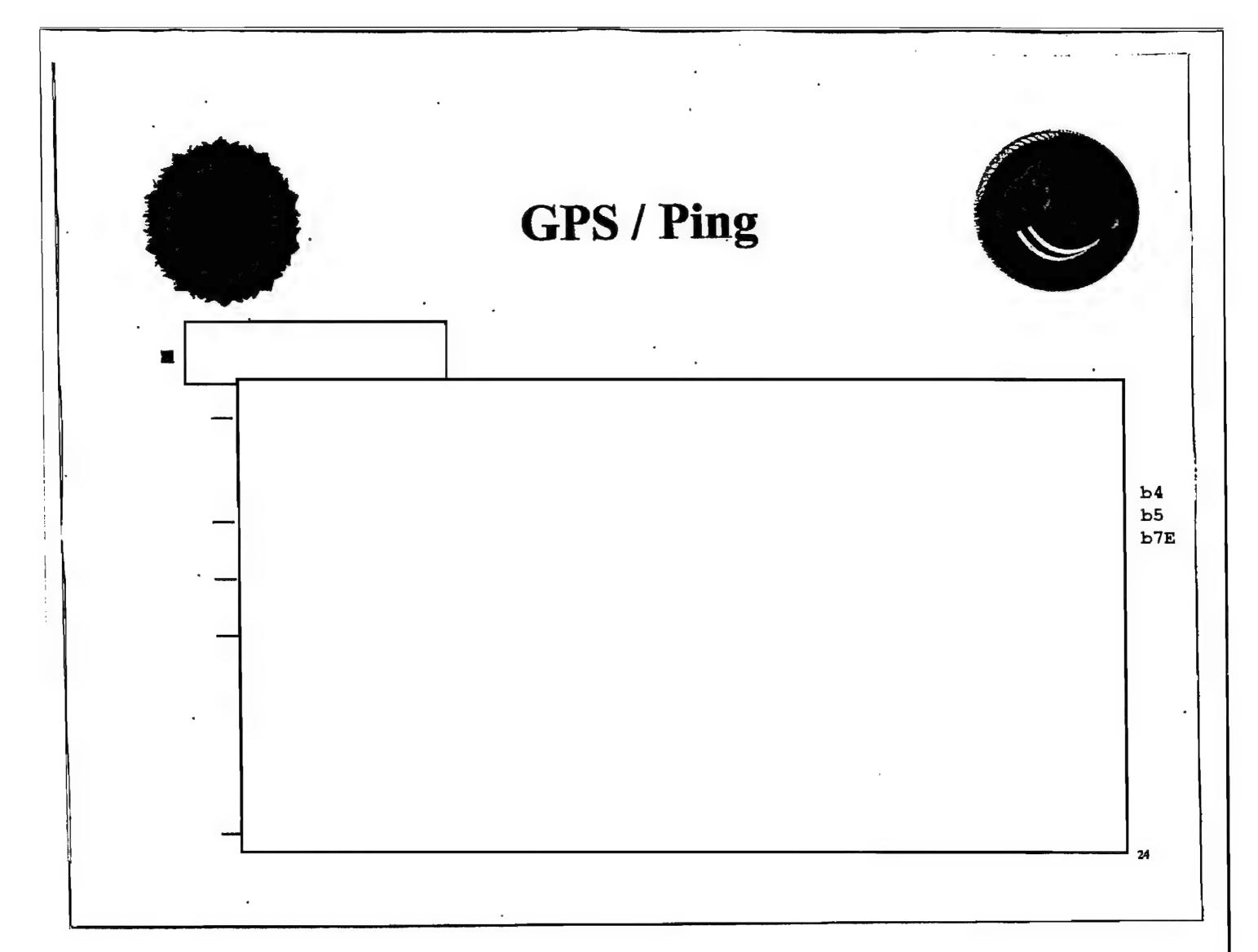
	Offini 4. Mary 1	and, 442 U.S. 435, 744
tation of privacy in in	formation knowingly	conveyed to a third part
<u>er</u> found "[n]o logical elephone number (or F	distinction between to SN number), all of w	elephone numbers called hich are regularly
and known to others. (1979)).	885 F. Supp. at 199 (	<u>citing Smith v. Marylan</u>
	er found "[n]o logical	etation of privacy in information knowingly ter found "[n]o logical distinction between the elephone number (or ESN number), all of what and known to others. 885 F. Supp. at 199 (45 (1979)).

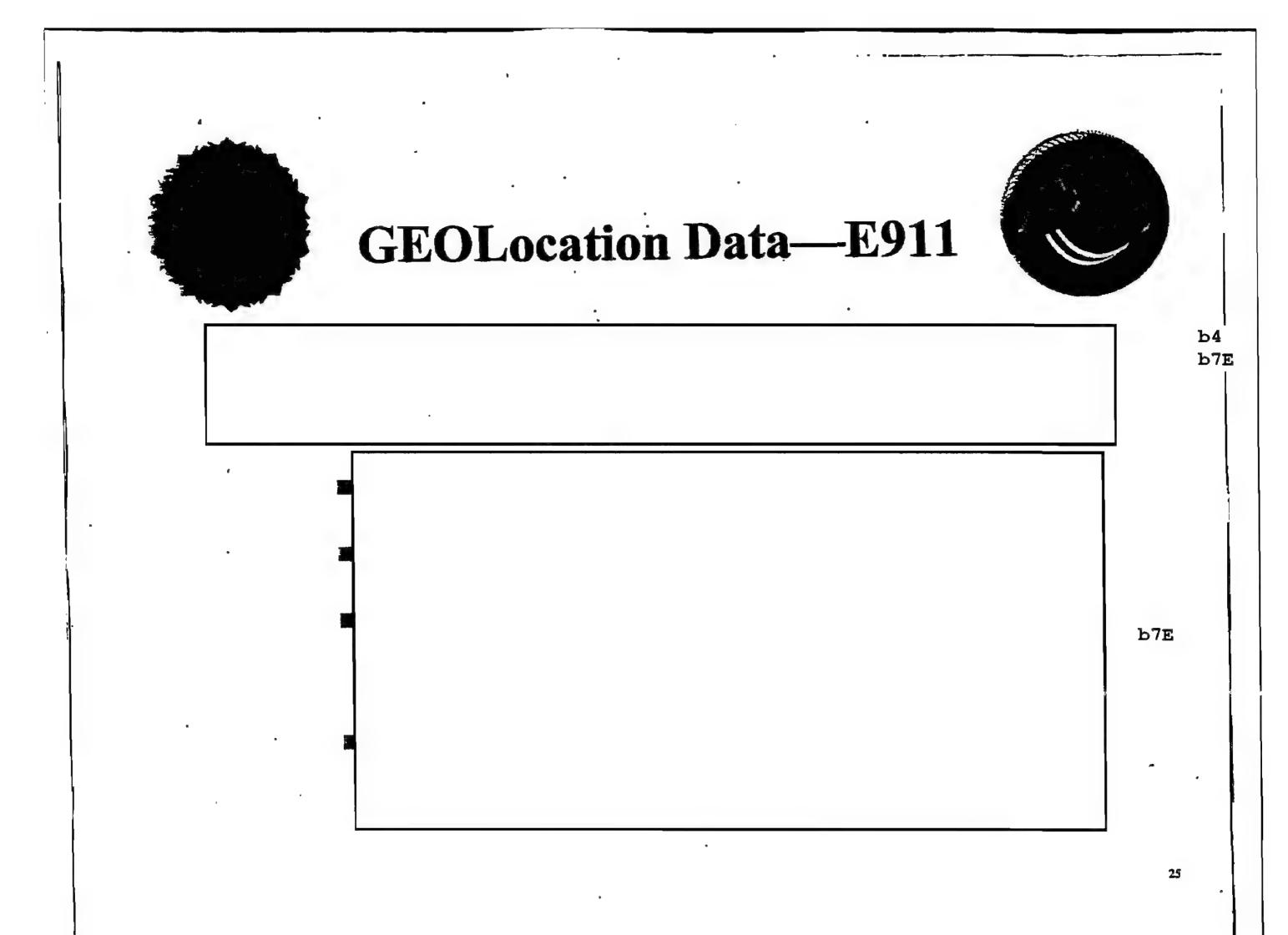


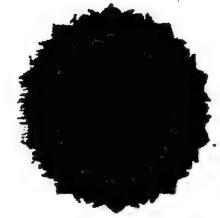
### 4<sup>th</sup> Amendment Privacy Interest



*	See Kyllo v. United States, 533 U.S. 27 (2001) (use of thermal imager to measure heat emitted from nome constituted a search in part because there was no objective reason for the home owner to know that a device would be routinely used to detect and measure heat emitted from his home).
•	See, e.g., United States v. White, 401 U.S. 745, 752 (1971) (plurality opinion) (party to conversation accepts the risk that his listener may betray his confidences); Hoffa v.



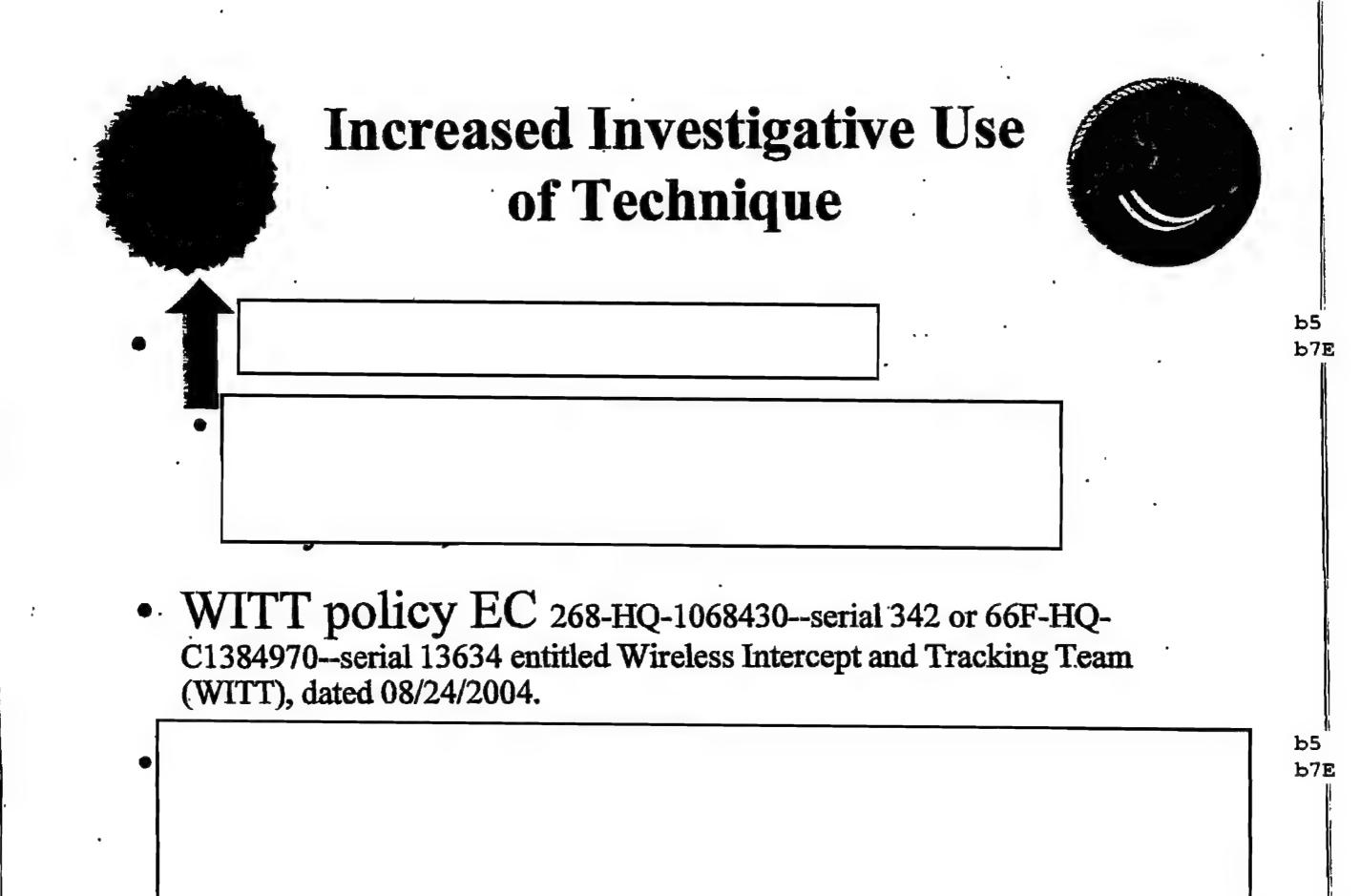




### Court order: 2703(d)



2703(d) order—	•
- will provision for up to	
max. charge	
Language:	
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## Cellular Tracking as Evidence



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# Protecting Sensitive Techniques



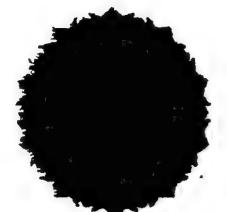
- Qualified Government Privilege in Non-disclosure based on Roviaro v. United States, 353 U.S. 53 (1957): disclosure of identity (and testimony) of informant.
  - Generally technique, type of device, location of install, etc. is protected
    - unless Defense can establish disclosure is necessary to defense, I.e., no other/adequate means to cross-examine/test evidence; if so:

_	• then Balancing of interests
•	
•	see also Jayme S. Walker "The qualified privilege to protect sensitive investigative techniques from disclosure." LEB Vol 69 NO.5 at 26 (May 2000).

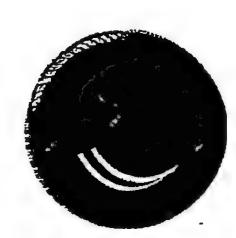
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### LOAN of ELSUR: STATE Authority



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### **TOPICS**

- General discussion and DES/OTD policy discussion
- Law Enforcement Sensitive (LES) what is it and why is it important
- Pen Register/Trap and Trace and WITT
- ELSUR support for State and locals
- Other topics as time permits



## General Operational Guidelines

Science & Technology Law Unit

UNCLASSIFIED/FOUO
DO NOT DISTRIBUTE WITHOUT OGC APPROVAL

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## OTD Policy

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Science & Technology Law Unit



#### Law Enforcement Sensitive

- Law Enforcement Sensitive (LES) collection devices, systems, techniques, and related information are not to be disclosed. Only the product of the technical operation is disclosed.
- Examples: WITT equipment is LES; CART SOPs are LES.



#### WITT

- WITT = Wireless Intercept Tracking Team
- WITT doesn't intercept; and
- WITT doesn't track



### Legal Authority for use of Pen Register Trap and Trace - Summary

- Besides 18 USC § 3121 3125 (... relevant to an ongoing criminal investigation ...)
- PRT&T captures "... dialing, routing, addressing, and signaling information
- WITT
- WITT is not
- 18 USC § 3121 states, "... no person may install or use a PRT&T device without first obtaining a court order ..." (CALEA)
- The FBI may not use WITT without an order.

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## Legal Authority to Deploy WITT

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### Legal Authority to Deploy WITT

When is a Rule 41 Search Warrant necessary? (Probable cause standard)



## The Requesting Agency shall <u>certify</u> that: (5.c)

Technology Law Unit

- Technical Assistance will be used lawfully.(5.c.1)
- Shall not be used outside of its jurisdiction. (5.c.2)

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DO NOT DISTRIBUTE WITHOUT OGC APPROVAL

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**Technology Law Unit** 

# Procedures for field office approval for technical assistance (6)

 The CDC shall review the request, the certification(s) and supporting court order and other legal process.(6.1.a)



**Technology Law Unit** 

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Science

## Title III vs. Pen/Trap

Pen/Trap (non-content:

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■ Title III – content of communications

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- (2) THE USE OF FBI ELECTRONIC SURVEILLANCE EQUIPMENT IN JOINT CASES WHERE STATE AND LOCAL LAW ENFORCEMENT AGENCIES OBTAINED AUTHORITY FOR ITS USE (SEE MIOG, PART 2, 10-10.3 (8).) (RCU)
- | (a) A JOINT CASE, for purposes of this section, is an investigation in which there exists significant FBI interest in the subject or subjects of a local investigation and substantial FBI investigative resources have been utilized and/or will be utilized in the planned investigation with the local agency. (RCU)
- (b) FBIHQ authority MUST be obtained prior to any use of FBI electronic surveillance equipment or personnel in furtherance of any order or authority obtained by state or local law enforcement agencies. Should approval be granted for such use, the pertinent local or state order or authority MUST contain specific language authorizing FBI participation and specifying whether the assistance is for installation, monitoring, or whatever is required. (RCU)
- (c) In requesting FBIHQ authority, the field office is to set forth the following information: (RCU)
- 1. A synopsis of the investigation conducted to date by FBI and the local agency involved, to include the date the FBI
- case was opened, as well as when the joint investigation was initiated. (RCU)
- 2. the specific SAC comments as to the value of the assistance to the FBI investigation and extent of federal control over local electronic surveillance. (RCU)
- | 3. the exact nature of equipment to be utilized and technical assistance required, and whether the equipment is on | hand in the requesting division. (RCU)
- 4. the specific comments of the equipment and the ability of the local agency to properly utilize technical equipment requested. (RCU)
- | 5. that the local agency has valid legal authority under state or local law to conduct the electronic
- | surveillance for which equipment will be utilized, to include citation of the specific statute; (RCU)
- 6. that the Chief Division Counsel or the Assistant U.S. Attorney has reviewed the affidavits and orders to be
- | filed and concurs in their sufficiency; and, (RCU)
- 7. that FBI policy in limiting disclosure as set forth in Part 2, Sections 10-10.13 and 10-10.16, of this manual, will
- be honored in any subsequent local proceedings. (RCU)

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The above information is to be provided by appropriate communication to the attention of the Operational Technology Division. as well as to either the Criminal Investigative Division or the as appropriate. (RCU)	b7E
(d) Any request for FBT assistance in the execution of a locally obtained court order which requires will be handled separately and will require significant justification. Emergency requests for such assistance are to be discouraged and likely will NOT be approved. (RCU)	
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Original Message	b5 b6
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<u>UNCLASSIFIED</u>	
. CELL/OID 006371	

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interest in the policy verbage reads:  The policy verbage reads:  The 47 United States Code- TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS  CHAPTER 5-WIRE OR RADIO COMMUNICATIONS  BUBCHAPTER III-SPECIAL PROVISIONS RELATING TO RADIO  Part I-General Provisions  Sec. 333. Willfull or malicious interference  To person shall willfully or maliciously interfere with or cause interference to any radio communicance or authorized by or under this chapter or operated by the United States Government.		
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CHAPTER 5—WIRE OR RADIO COMMUNICATIONS SUBCHAPTER III—SPECIAL PROVISIONS RELATING TO RADIO Part I—General Provisions Sec. 333. Willful or malicious interference No person shall willfully or maliciously interfere with or cause interference to any radio communicensed or authorized by or under this chapter or operated by the United States Government.		
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